

Exhibit 8

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF MICHIGAN
4 SOUTHERN DIVISION

5 GERARD WIENER, individually, and as
6 Personal Representative of the Estate of
7 Roland C. Wiener,

8 Plaintiff,

v.

9 BANKERS TRUST COMPANY, et al.

10 Defendants.

11 AND RELATED CROSS-ACTIONS

CASE No. 11-10770

Hon. George Caram Steeh

**PLAINTIFFS' OPPOSITION TO
GMAC'S RENEWED MOTION
FOR SUMMARY JUDGMENT**

14 *Gavin J. Fleming (P68366)*
15 Attorneys for Plaintiffs
16 Hubbard Snitchler & Parzianello PLC
17 30665 Northwestern Highway, Ste. 100
18 Farmington Hills, MI 48334
19 248-932-1101

248-952-5100
Bruce M. Gorosh (P35455)
Attorneys for Jeffrey Baskin and Lauren
Newman
Lefkofsky & Gorosh PC
31500 Northwestern Highway
Suite 105
Farmington Hills, MI 48334
248-855-5508

20 David J. Brown (CA56628)
21 Attorney for Plaintiffs
22 1135 Ulloa Street
23 San Francisco, CA 94127
24 (415) 716-7786

26 Daniel P. Perk (P39004)
27 Miller Johnson
28 Attorneys for Freddie Mac
303 North Rose Street
Suite 600
Kalamazoo, MI 49007
269-226-2958

22 Frank M. DeLuca (P41604)
23 Attorneys for Defendants Bankers Trust
24 And GMAC Mortgage
25 McKelvie DeLuca, PC
26 280 West Maple Road
27 Suite 300 ·Birmingham, MI 48009

1 TABLE OF CONTENTS 2

3	Table of Authorities	iii
4	I. Note Regarding an Independent Reason for Not Granting 5 GMAC'S Renewed Motion—GMAC Did Not Fulfill All the 6 Prerequisites to Bringing the Renewed Motion	1
7	II. Introduction to Summary Judgment Opposition	6
8	III. Background	11
9	A. GMAC's Initial Dealings with Gerard Wiener	11
10	IV. Argument	15
11	A. Much Is Already Briefd	15
12	B. GMAC's Makes a False Claim on Page 10 of Its Brief	15
13	C. Additional Relevant Law and Argument	16
14	V. Conclusion	19

TABLE OF AUTHORITIES

CASES:

<u>AUTHORITY</u>	<u>PAGE</u>
<i>Alexander v. FBI</i> , 186 F.R.D. 148, 152 (D.D.C. 1999)	6
<i>Triple Crown America, Inc. v. Biosynth AG</i> , 1999 WL 492661, (E.D.Pa. July 12, 1999)	6
<i>Rainey v. American Forest & Paper Ass'n</i> , 26 F. Supp. 2d 82, 94 (D.D.C. 1998)	6
<i>Int'l Casings</i> , 358 F.Supp.2d 863, 875 (W.D. MI, 2005)	17, 18
<i>Opdyke Investment Co. v. Norris Grain Co.</i> 413 Mich. 354, 367-368, 320 N.W.2d 836 (1982)	18
<i>McMath v. Ford Motor Co.</i> , 259 N.W.2d 140, 142 (Mich. Ct. App. 1977)	18
<i>Schmidt v Bretzlaff</i> , 528 N.W.2d 760, 762 (Mich. Ct. App. 1995)	18
<i>State Bank of Standish v Curry</i> , 500 N.W.2d 104, 107 (Mich. 1993))	18

STATUTES AND RULES:

<u>AUTHORITY</u>	<u>PAGE</u>
FEDERAL RULE OF CIVIL PROCEDURE – RULE 30(B)(6)	6
MCL 6003.3163	17
MCL §450.832(h)	17

1
2 PLAINTIFFS' OPPOSITION TO GMAC'S RENEWED MOTION FOR
3 SUMMARY JUDGMENT
4

5 **I. NOTE REGARDING AN INDEPENDENT REASON FOR NOT**
6 **GRANTING GMAC'S RENEWED MOTION—GMAC DID NOT FULFILL**
ALL THE PREREQUISITES TO BRINGING THE RENEWED MOTION

7 GMAC brought the renewed summary judgment motion prematurely
8 because GMAC never provided a qualified PMK (person most knowledgeable) for
9 the agreed upon PMK deposition. Providing such a person was an absolute pre-
10 requisite to GMAC being permitted to seek determination of its summary
11 judgment motion in this Court. The PMK deposition agreement described as:
12 "One deposition of GMAC Mortgage's person most knowledgeable ("PMK"),
13 conducted in accordance with the Federal Rules of Civil Procedure, to take place in
14 Detroit, Michigan, about the following agreed upon subjects (the "PMK Topics")
15 with appropriate follow-up on any questions not answer because of assertion of a
16 privilege by means of Movant's motion to compel: [followed by the list of PMK
17 topics noted below].¹

18 At the purported PMK deposition, GMAC produced as its PMK witness,
19 Roberto Montoya. Mr. Montoya while presented as and purporting to be a PMK
20 was virtually useless because he did not prepare sufficiently to bring himself up to
21 speed on the facts known by GMAC with respect to the PMK Topics. While the
22 PMK Topics were broad in scope by their nature, they were topics to which GMAC
23 had agreed by stipulation. GMAC hence had a duty to have its PMK witness up to
24 speed on those topics.

25 The PMK Topics were:

26 a. Administration of the loan after made

27
28 ¹ Exhibit A to this Opposition comprising the Stipulation and Order with Respect to Motion of Gerard Wiener for Relief from Automatic Stay as to GMAC Mortgage, LLC.

- 1 b. All aspects of any foreclosure actions regarding the loan
 - 2 c. Communications with owner of loan, Freddie Mac, once payments on the
 - 3 loan ceased, including up to GMAC's bankruptcy filing
 - 4 d. Who, in terms of persons and entities made decisions regarding the
 - 5 Wiener loan after payments ceased, specifically including how the decisions were
 - 6 communicated to GMAC if they were not GMAC decisions
 - 7 e. How the GMAC relationship with Freddie Mac worked with respect to the
 - 8 Wiener loan and the foreclosure sale, the attempts to modify the loan, who made
 - 9 decisions regarding the handling of the loan, and how, if at all, the Freddie Mac
 - 10 Single Family Seller/Servicer Guide played any role in these activities
 - 11 f. How and why GMAC, directly and indirectly was communicating with
 - 12 Gerard Wiener and his attorney after the foreclosure sale occurred
 - 13 g. What authority GMAC had from time-to-time with respect to the Wiener
 - 14 loan to modify the loan, to negotiate possible modification of the loan, and from
 - 15 whom or what in terms of communications that authority came
 - 16 h. GMAC's reference to and following of Freddie Mac's loan modification
 - 17 policies and procedures
 - 18 i. GMAC's policies and procedures as used in connection with the
 - 19 foreclosure on the Wiener loan
 - 20 j. GMAC's policies and procedures regarding post foreclosure activities on
 - 21 the Wiener loan
 - 22 k. GMAC's policies and procedures regarding the Federal Home Loan
 - 23 Modification program as it was applied or considered to be applied to the Wiener
 - 24 loan.
- 25 Other than spending at most an aggregate of three hours with attorneys for
- 26 GMAC (one inside attorney and one outside attorney), Mr. Montoya talked with
- 27 absolutely no one at GMAC, GMAC's outside foreclosure attorneys or anyone else
- 28 about any of the topics he was designated to be most knowledgeable of and

1 address. He did not talk with the outside foreclosure attorneys' personnel who
2 handled the GMAC's foreclosure efforts on the Wiener loan. He talked with no one
3 at GMAC who were persons who were involved regarding the Wiener loan, despite
4 the fact that in its discovery response to the plaintiffs, GMAC had in October of
5 2011 asserted when asked then to identify a PMK most knowledgeable about the
6 Wiener loan: "GMAC submits that there is no one person that is most
7 knowledgeable regarding the loan made to Roland Wiener. GMAC submits that
8 numerous individuals/departments within GMAC may possess information
9 regarding the applicable loan file."² Taking this interrogatory response at face
10 value, for Mr. Montoya to become knowledgeable about what GMAC knew about
11 each of the PMK Topics obviously would reasonably require that he consult with a
12 number of GMAC's and its agents' people to learn about the PMK Topics
13 sufficiently to qualify as a PMK as to each of those topics.

14 Mr. Montoya's failure to obtain sufficient knowledge to be a PMK was
15 confirmed by the following facts:

- 16 • Prior to being designated as the PMK deponent in this case, Mr.
17 Montoya knew nothing about the Wiener loan. We was designated to
18 be the PMK witness about a couple of months prior to the deposition.
19 Exhibit C, hereto, at the Montoya deposition page 7, lines 16-21.
- 20 • He has never ever met Patricia Scully and does not know her. Exhibit
21 C, hereto, at Montoya deposition page 11, lines 2-5.
- 22 • Mr. Montoya never talked with anyone at GMAC about the Wiener
23 loan (setting aside the attorneys earlier mentioned). Exhibit C,
24 hereto, at Montoya deposition page 14, lines 5-8.
- 25 • When Mr. Montoya reviewed the computer stored GMAC "service
26 notes" on the Wiener loan, he did not seek to identify who made any

27
28 ² GMAC's response to Plaintiffs' Interrogatory No. 1 – a true copy of which is Exhibit B
hereto together with the signature page of the GMAC discovery responses which included
the response to Interrogatory No. 1.

1 service noted entries nor make any attempt to contact any of the
2 persons who made the service note entries to learn more about the
3 substance of the service notes and what was occurring at the time.

4 Exhibit C, hereto, at Montoya deposition page 29, line 17 to deposition
5 page 30, line 15.

- 6 • Mr. Montoya did not talk with anyone at Freddie Mac about the
7 Wiener loan. Exhibit C, hereto, at Montoya deposition page 14, lines
8 9-11.
- 9 • Mr. Montoya did not talk with anyone else outside of GMAC about the
10 Wiener loan. Exhibit C, hereto, at Montoya deposition page 14, lines
11 12-14.
- 12 • Mr. Montoya did not talk with anyone at the Orlans' firm in preparing
13 for his deposition. Exhibit C, hereto, at Montoya deposition page 14,
14 line 25 to deposition page 15, line 3.

15 All Mr. Montoya did was look at some documents he was provided by Mr.
16 DeLuca and a few that he could see on portions of GMAC's system he had the
17 ability to view, and talk with Mr. DeLuca for about 1.5 hours and Ms. Buen of
18 GMAC's legal department for about the same amount of time. Exhibit C, hereto, at
19 Montoya deposition page 15, lines 11-15.

20 His failure to seek to learn or be presented with materials or people who
21 knew facts relevant to the agreed upon PMK Topics for which GMAC designated
22 him as the person most knowledgeable is staggering and proves that once again
23 that GMAC is not really trying to deal fairly with its customers or former
24 customers.

25 Mr. Montoya's lack of knowledge regarding the PMK Topics for which he
26 was designated abounds. One example is

27 Mr. Montoya was asked: "Is it correct that you don't know who, if anyone,
28 dealing on the Wiener loan made reference to the Freddie Mac Seller Servicer

1 Guide, correct? He responded: "I don't know, that's correct". Exhibit C, hereto, at
2 Montoya deposition page 94, lines 6-9.

3 Another example occurred when Mr. Montoya was being asked about entries
4 in the GMAC service notes. One note said "DEF-options to avoid foreclosure." "Q.
5 Do you know what that entry means?" "A. I don't, sir." Exhibit C, hereto, at
6 Montoya deposition page 35, lines 13-20.

7 A further example is whether Mr. Montoya as the PMK knew if GMAC or its
8 foreclosure folks ever notified Gerard Wiener, Gerard Wiener's attorney or his
9 sisters that the foreclosure sale would occur on January 5 , 2010: "Q. Okay. In
10 your review of materials preparing for this deposition did you see or hear anything
11 that indicated that Mr. Wiener or his attorney Mr. Pookrum or either of his sisters,
12 were ever informed that the foreclosure sale date was going to be January 5th,
13 2010?"

14 "A. I don't know if there was, sir. I don't know if there was any letters that were
15 sent out to Mr. Wiener notifying him of the sale on January the 5th, 2010." "Q.
16 Okay. You don't know and you don't recall seeing any, correct?" "A. Correct."
17 "Q. And would that same answer be true if the question were broad enough to
18 communications, be it by letter, by e-mail, by fax or verbally, if a verbal – if a
19 record was made of the verbal conversation in the notes?" "A. That's correct."
20 Exhibit C, hereto, at Montoya deposition page 75, lines 7-24.

21 Importantly, the stipulation and order that allows GMAC to bring this
22 renewed includes a requirement that a PMK deposition on the PMK Topics occur.
23 The PMK was to have knowledge about what GMAC knew concerning the PMK
24 Topics. This purported PMK did not have any real knowledge and made no
25 meaningful effort to learn.

26 Mr. DeLuca inadvertently summed up Mr. Montoya's problem as a PMK
27 witness when at Mr. Montoya's deposition he said: "Well, he's not a fact witness,
28 Counselor. He's here as a corporate designated witness 30(b)(6) witness. He does

1 not have intimate knowledge of what actually transpired in this case." Exhibit C,
2 hereto, at Montoya deposition page 71, lines 6-9.

3 Mr. Montoya was not prepared. He was not a PMK. He was not prepared to
4 "testify about information known or reasonably available to the organization"
5 as required by Federal Rule of Civil Procedure 30(b)(6).

6 The Rule facilitates the securing of a corporation's testimony, to limit
7 "bandying" and to reduce the overall number of depositions needed. See Fed. R.
8 Civ. P. 30(b)(6) advisory committee's note; *Alexander v. FBI*, 186 F.R.D. 148, 152
9 (D.D.C. 1999). Thus, **the Rule requires a corporation when necessary to**
10 **prepare a witness with pertinent information reasonably available to**
11 **it.** [Emphasis added] See, *Triple Crown America, Inc. v. Biosynth AG*, 1999 WL
12 492661, (E.D.Pa. July 12, 1999); *Rainey v. American Forest & Paper Ass'n*, 26 F.
13 Supp. 2d 82, 94 (D.D.C. 1998). The burden is on a corporation seeking to avoid
14 compliance on the basis that the information sought is not known or reasonably
15 knowable to move for and justify a protective order.

16
17 Here, not only did GMAC not seek a protective order. To the contrary by
18 stipulation it fully agreed to the topics, made no objections, and sought no
19 limitation on the topics. However, having made the agreement, GMAC did not live
20 up to it. Instead it did not have Mr. Montoya adequately prepared. Since a Rule
21 30(b)(6) witness must testify to the entity's knowledge, he must learn that
22 knowledge to fulfill the entity's obligation under the Rule.
23

24 **II. INTRODUCTION TO SUMMARY JUDGMENT OPPOSITION**
25

26 GMAC Mortgage ("GMAC") was the servicer of a loan owned by Freddie
27 Mac. Roland Wiener had purchased a condominium home for his family in May,
28 1972. In 1997 he refinanced the loan to obtain cash, while keeping the home for

1 his three children, Gerard Wiener, Alice Wiener and Charlotte Wiener.³ This
2 refinancing loan is the subject matter of this case.

3 Roland Wiener passed away on January 23, 2009.⁴ Shortly after Roland
4 Wiener's death, his son, Gerard Wiener, undertook to learn the status of the loan
5 from GMAC, inform GMAC of Roland Wiener's death, provide GMAC his contact
6 information and initiate a discussion with GMAC about what the Roland Wiener
7 Estate could do with the loan and home going forward.⁵

8 What followed was over a year of frustration experienced, mis-information
9 given, and stalling, all done by GMAC. It had the result of totally thwarting Gerard
10 Wiener's attempts to learn about and deal with the loan and property on behalf of
11 his father's Estate.⁶

12 The situation must be evaluated with the understanding that GMAC was and
13 is a giant company which brazenly asserts its wishes in a manner which makes life
14 difficult for borrowers and their successors. GMAC as a matter of course,
15 forcefully asserted itself in a bombastic and pretentious manner, rather than
16 rationally dealing with Gerard Wiener as the successors' representative. GMAC's
17 actions directly resulted in a significant cost to the Estate and Gerard Wiener, and
18 GMAC ignored the concepts of fairness, evenhandedness and truthfulness.

23
24
25
26
27
28
3. See Note and Mortgage, Exhibits B and C to GMAC's Renewed Summary Judgment.

4 Declaration of Gerard Wiener in Opposition to GMAC's Renewed Motion for Summary
Judgment ("Renewed Wiener Declaration"), Exhibit D hereto, at ¶ 3.

5 Renewed Wiener Declaration, Exhibit D hereto, at ¶ 4.

6 Renewed Wiener Declaration Exhibit D hereto, at ¶ 5.

1 GMAC in asserting its summary judgment position relies on (1) a first
2 forbearance attempt's purported failure in October and early November of 2009,
3 and then (2) its incorrect characterization of a 2nd forbearance plan it offered,
4 which never came to fruition.

5 The second forbearance plan offered by GMAC failed not because of the
6 Wieners, but because GMAC's spokesperson to the Wieners, Ms. Scully,
7 abandoned the proposed forbearance plan and them, apparently to take her
8 Christmas break. She left without (1) making any arrangements for coverage of
9 her desk or personal office fax machine while she was gone, or (2) reviewing the
10 file to see if she needed to do something to make sure some other element of
11 GMAC did not take any foreclosure sale action until she returned and looked at
12 communications from the Wieners relevant to the forbearance offer.

15 Gerard Wiener and his sister Charlotte Wiener fulfilled their obligation to
16 provide certain information to GMAC's representative, but she abandoned her
17 effort and through gross negligence stopped functioning as GMAC's representative
18 dealing with the Wiener Estate and family. That abandonment occurred just
19 when the Wieners had sent her the final papers (Charlotte Wiener's credit and
20 income information) Ms. Scully had requested and which Ms. Scully wanted before
21 a forbearance agreement was to be offered and tendered to the Wieners for
22 signature and payment. *See, Exhibit I hereto, Excerpts from the November 29,*
23 *2012, Deposition of Ms. Scully, at page 60, line 18-page 61, line 8; page 77, line 20;*
24 *page 84, lines 13-14; page 85, line 1-page 86, line 7; page 88, lines 6-11 [Exhibit 10*
25 *referenced in the Scully Deposition is The Charlotte Wiener Materials axed on*

1 December 23, 2009]; page 88, lines 12-24; page 89, line 15-page 90, line 2. It is
2 interesting that Ms. Scully said that if she had seen Charlotte Wieners' submission
3 on December 23rd, she would have looked at it and would have tried to evaluate it
4 or tell Charlotte Wiener if she needed to send more information or anything else
5 in. *Id.*

6
7 Way after the fact, Ms. Scully now claims that the attempt to put together a
8 forbearance agreement had morphed into an assumption plan, but that
9 characterization is contrary to what GMAC noted in its "service notes" concerning
10 the loan, when after the foreclosure sale had occurred, a GMAC senior
11 representative told Gerard Wiener's attorney that the foreclosure sale took place
12 because the Wieners had not made a payment or confirmed acceptance of a
13 forbearance plan then on the table (the second attempt) and that he learned that
14 fact from the loss mitigation person involved.⁷ Specifically, the service note said:
15 "spoke to A3p [authorized third party]. Sttd [stated] tht[that] custmr believe he
16 was on forb [forbearance] agreement. Advised 3p forb [forbearance] was offered
17 but accoiring [according] to Det HOPE rep info on forb not received. Advised file
18 went to sale due to this. Advised 3p sale adjourned twice. 3p sttd tht sale shld
19 have been adjorned again due to forb although cust didn't make pymt and no
20 confirm on plan recd."

21
22
23
24
25
26
27
28

⁷ Exhibit G is a copy of some excerpts of GMAC's Service Notes which were kept on a computer system as a contemporaneous record of many of GMAC's activities concerning the Wiener Loan. Both Ms. Scully and GMAC's PMK, Mr. Montoya, testified to facts that qualify these notes as business records of GMAC. See, Exhibit H, hereto, comprising deposition excerpts of Ms. Scully and Mr. Montoya to those facts.

1 Although Gerard Wiener and his sister sent the materials requested by Ms.
2 Scully in, they did not sign an agreement or make a payment because Ms. Scully
3 never gave them a payment amount or sent them an agreement to sign. See,
4 Exhibit I hereto at page 96, line 18-page 97, line 17. Also see, Exhibit D, hereto, at
5 ¶ 15, in which Mr. Wiener notes: "With respect to the second forbearance attempt
6 Ms. Scully never sent me a forbearance agreement to sign, and never provided me
7 with the final exact payment to be made as the initial payment or for any other
8 subsequent payments. I believed one would come after she and her group had
9 reviewed my sister's and my submissions."

12 Additionally, Mr. Wiener was never informed of the January 5, 2010,
13 foreclosure sale date. See, Exhibit D at ¶ 17. As noted above, Mr. Montoya never
14 saw in what he looked at any record of such a communication.

16 The net result of all of GMAC's conduct was a series of foreclosure misdeeds
17 and actions bringing great harm to the Wieners. The attitude of not fairly dealing
18 with or caring about the Wiener family after Roland Wiener's death was repeated
19 often and justifies holding GMAC liable in tort for its wrongful actions. Even if the
20 Court continues to accept the notion that the sale of the property to its current
21 owners cannot be undone, the harm to the Wieners is recompensable.

24 No matter how else things are cut, there is at a minimum a triable issue of
25 material fact as to whether the foreclosure was premature because from all that
26 Ms. Scully did, the Wiener family was reasonably waiting for a response to its
27 submissions, the Wieners were never given an agreement to sign or an amount to
28 pay, and they were never informed of the upcoming revised foreclosure date.

1

2 III. **BACKGROUND**

3

A. GMAC's Initial Dealings with Gerard Wiener

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

On February 4, 2009, Gerard Wiener called GMAC to tell it of his father's death, supply his contact information, and inquire into a loan payoff figure for his childhood home. Unbelievably, this phone call was the first of no less than 53 unsuccessful attempts by Gerard Wiener to obtain critical information to which he was entitled and to provide GMAC information which logically one would think it wanted, to wit: The name and contact information of an alive person with whom it could deal.⁸

The first call, however, was a vivid foreshadowing of future events. GMAC put Gerard Wiener on hold for 46 minutes, then transferred him to GMAC's Assumptions Department. The Assumptions Department told him that no one could speak with him unless GMAC received a probate court letter of authority for Gerard Wiener or, since in this case an estate had not yet been opened, a filed death certificate regarding Roland Wiener. Gerard Wiener agreed to send his father's death certificate immediately. He also provided all of his contact information and requested that GMAC add it to the loan file.⁹

Gerard Wiener promptly sent his father's death certificate to GMAC's Assumptions Department by mail, along with all of the Estate's contact information. On behalf of the Estate he continued to make timely mortgage

⁸ Exhibit D, at ¶ 19.

1 payments on the loan. GMAC without question or comment accepted those
2 payments but would do and did nothing in response to Gerard Wiener's request to
3 discuss the loan with GMAC.¹⁰

4 When Gerard Wiener called to discuss the mortgage shortly after sending in
5 the death certificate and contact information, GMAC said that it's system did not
6 reflect receipt of the death certificate and thus it could not speak to him. GMAC
7 advised Gerard Wiener that it could take some time for the death certificate he had
8 sent to be reflected in GMAC's system even though it had physically been received.
9 GMAC pretended it did not exist because even though it had received it, GMAC's
10 people had not caused it to be entered into GMAC computer system. It then asked
11 him to wait and call back later.¹¹ GMAC's runaround had begun.

12 This scenario repeated itself dozens of times. It took over six months before
13 GMAC finally "discovered" and acknowledged its receipt of Roland Wiener's death
14 certificate. In the meantime, Plaintiff called GMAC at least once, sometimes
15 several times a week, in the weeks and months following his initial contact, to
16 discuss the mortgage. He also on March 3, 2009, sent a letter to GMAC's
17 Waterloo, Iowa, Assumptions Department, explaining the status of matters and
18 asking for assistance. He received no response. Exhibit D at ¶ ____

19 From Gerard Wiener's point of view, the Estate urgently needed answers to
20 certain questions, including: (1) whether there was life insurance in place on the
21

22
23
24
25
26
27
28
9 Exhibit D at ¶ 20.
10 Exhibit D at ¶ 21.
11 Exhibit D at ¶ 22.

1 mortgage; (2) an exact payoff figure; and (3) how to remove certain unnecessary
2 (and improper, as Gerard Wiener believed) recurring charges from the mortgage
3 payment (to which Roland Wiener may not even have consented but which in any
4 event were no longer needed, including so-called “credit protection” coverage).
5 Gerard Wiener was asking about these subjects because in one of his early phone
6 calls to GMAC, a GMAC person told him that the loan had a credit protection plan
7 and other possible features, e.g., a legal advice provision.¹²

8 Each time Gerard Wiener asked about these things, he was either told that
9 GMAC had still not received the death certificate and, therefore, could not speak
10 with him, was disconnected, or was improperly routed to some unit that could not
11 provide any help.¹³

12 He was told to fax the death certificate again. He did so, and also mailed it
13 to the Assumptions Department. During one of Gerard Wiener's follow-up phone
14 calls, the GMAC Assumptions agent advised him that it could take up to three
15 weeks for a fax to “hit the system” and advised him to “relax and wait a few weeks”
16 and then call back.¹⁴

17 In each instance when Gerard Wiener called GMAC, he was advised that
18 without the death certificate being in GMAC's file, he could not be given any
19 information or response either on the phone or in writing.¹⁵ GMAC refused to
20

21 ¹² Exhibit D at ¶¶ 23 & 24.

22 ¹³ Id.

23 ¹⁴ Id.

24 ¹⁵ Id.

1 address his monetary offer to pay-off the loan.¹⁶ Not only was this communication
2 incredible, it was stupid not to consider, discuss or otherwise take the offer.

3 Finally, in April 2009, out of sheer frustration, Gerard Wiener had the Estate
4 suspend mortgage payments in an attempt to get GMAC's attention and cause it
5 once and for all to deal with him. That effort too failed. When, on April 15, 2009,
6 Gerard Wiener called GMAC's Assumptions Department and explained that the
7 Estate was having difficulty justifying making mortgage payments without knowing,
8 for one thing, whether there was mortgage insurance. The GMAC representative
9 advised him that it had no proof in its system that Gerard Wiener was authorized to
10 discuss the loan, but that nonetheless the best solution would be for him to
11 quitclaim the house directly over to GMAC without any compensation, in order to
12 protect his dead father's credit. "Don't you want to protect his memory?" taunted
13 the GMAC agent. Appalled, Gerard Wiener asked to speak to a supervisor or
14 someone else in authority. His request was denied, then he was put on hold for 42
15 minutes, and then disconnected.¹⁷

16 The events that occurred up to mid-November, 2009, including the initial
17 foreclosure attempt based on letters sent to Roland Wiener after he had died are
18 articulated in Plaintiffs' earlier Summary Judgment responses, incorporated by
19 this reference, and will not be repeated here.¹⁸

20 Factually, what is important to say is that while GMAC was advising Gerard
21 Wiener to give GMAC more time to process and enter into its system, his father's
22 death certificate, Gerard Wiener's Court letters of authority making him the
23 representative of the Estate of Roland Wiener, and additional attempts to find
24 someone who would discuss the loan with him, GMAC without notice of any sort to

26 ¹⁶ Id.
27

28 ¹⁷ Exhibit D at ¶ 25.

¹⁸ See Docket Items Nos. 48, 64, 66, 74 and their Exhibits.

1 Gerard Wiener, via its foreclosure attorneys at the Orlans law firm, had initiated
2 proceedings to foreclose on the property. That wrongful conduct was further proof
3 of GMAC callous and pompous attitude about its customers. Even though GMAC
4 had been given verbal and written notice of Roland Wiener's death numerous
5 times and had been sent Roland Wiener's death certificate a number of times,
6 GMAC chose to give notice of its foreclosure activities to the deceased Roland
7 Wiener and not to Gerard Wiener or his sisters.

8

9 **IV. ARGUMENT**

10

11 A. Much Is Already Briefed

12 As this Court may recall, many of GMAC's current arguments were made
13 before and have been briefed by both sides already. Rather than repeat the
14 plaintiffs' arguments, we ask the Court to look at the following pleadings and their
15 exhibits that address much of what GMAC now argues. Those pleadings are
16 Docket Numbers 48, 64, 66, 74 and their Exhibits.

17 B. GMAC's Makes a False Claim on Page 10 of Its Brief

18 GMAC argues that "Scully, agreed to adjourn the November foreclosure sale
19 and sent Plaintiff a **second foreclosure agreement** for Plaintiff to execute. Per
20 the proposed agreement, Plaintiff was to submit the necessary paperwork and
21 documentation. Again, Plaintiff failed to submit the required documentation."
22 [Emphasis added] This is pure garbage and GMAC offers no evidence whatsoever
23 to support its assertion that it sent a second foreclosure agreement for Plaintiff to
24 execute.

25 Ms. Scully did adjourn the November foreclosure sale upon receipt of certain
26 factual information forms that were filled out and returned by Gerard Wiener a
27 day after she asked for them. None of those documents were a foreclosure
28 agreement, a forbearance agreement or anything close to that. Ms. Scully wanted

1 similar documents from Charlotte Wiener who at Ms. Scully's insistence was going
2 to live at the house to fulfill what Ms. Scully had told Gerard Wiener was a
3 requirement that needed to be fulfilled for a forbearance to occur.¹⁹ After taking
4 the time necessary to gather and prepare the documents, those were sent to Ms.
5 Scully. No "foreclosure agreement" or "forbearance agreement" was a part of the
6 documentation Ms. Scully sent to the Wieners or otherwise asked for.²⁰

7 What was to occur was upon receipt and review of that documentation,
8 GMAC was going to send an agreement and payment table to the Wieners.
9 Instead, GMAC via Ms. Scully, went silent and foreclosed on the property without
10 bothering to tell the Wiener's of he new foreclosure sale date.

11 The offensive and wrongful game played here by GMAC was to ask for
12 factual information documentation to be completed and returned to it for review,
13 and then silently have a foreclosure sale (without notice to the Wieners) while the
14 Wieners were waited for the documentation review to be completed. GMAC's
15 *three card monte* should not be allowed to be successful here.

16 Among other things, GMAC's combination of purportedly considering a
17 forbearance agreement silently foreclosing is an unfair business practice. M.C.L. §
18 445.901, *et seq.*

20 C. Additional Relevant Law and Argument

21 Beyond what is in the prior briefs, we note:

22 * The statute of frauds upon which GMAC relies does not require a
23 signature of the borrower, only the lender. And, as noted before, that "signature"
24 can be via e-mail.

25 * The Sheriff's Deed as recorded has a significant irregularity that

27 ¹⁹ Exhibit D at ¶ 12.

28 ²⁰ Exhibit J hereto contains the packages of documentation Scully asked for, which were
sent to her private office fax machine.

1 caused the title to the property to be slandered by GMAC with the Sheriff being the
2 inadvertent tool of GMAC through its foreclosure attorneys who prepare the
3 documentation. The Sheriff's Deed notes that notice was published that a private
4 foreclosure sale would be made on January 5, 2010 at the Courthouse in Pontiac,
5 Michigan.²¹ That Deed's attachments purporting to prove that a notice of sale for
6 that January 5, 2010, was published, the attached notices only prove that such a
7 notice was published for a sale on September 8, 2009. That issue plus the fact
8 that Gerard Wiener also was not provided with the January 5, 2010 foreclosure
9 sale date makes the sale suspect and an issue of fact exists as to whether or not
10 GMAC's foreclosure attorneys properly conducted the sale with appropriate
11 notices. A reasonable inference from the Sheriff's Deed is that the notice was not
12 proper and Gerard Wiener's testimony by his Declaration under penalty of perjury,
13 coupled with the Montoya testimony at his deposition that he say nothing that
14 indicated any notice of the January 5, 2010 sale was given to Mr. Wiener all lead to
15 the conclusion that the foreclosure sale was not proper.

16 * Judicial foreclosure was necessary because there was not sufficient
17 compliance with MCL 6003.3163.

18 * If considered, the Mallory affidavit fails to show a basis for how she
19 knows that she says. That is necessary.

20 * Unlike what happened in the Hartop v. Deutsche Bank case Oct 13.
21 2010, after foreclosure sale was postponed, and the 'new" date was changed to
22 December 5, 2010, no notice given of new date to Wieners.

23 * The statute of frauds does not eliminate the wrongful foreclosure
24 issue. The statements upon which we rely are written and the e-mail signature of
25 Ms. Scully satisfies the signature requirement of the statute of frauds. See MCL
26 §450.832(h). It can include e-mails. *Int'l Casings*, 358 F.Supp.2d 863, 875 (W.D.
27

28 ²¹ Exhibit K, copy of the recorded Sheriff's Deed with attachments purporting to prove
notice publication.

1 MI, 2005). Whether considered a contract or promissory estoppel²², there is a
2 signed writing. The Michigan Supreme Court notes the factual complexity of
3 application of the statute of frauds and that it is not as rigid as the defendants
4 suggest. Rather than apply fixed rules for compliance with the statute of frauds,
5 the Court adopted a case-by-case approach. In *Opdyke Investment Co. v. Norris*
6 *Grain Co.* 413 Mich. 354, 367-368, 320 N.W.2d 836 (1982) it stated: We decline to
7 accept the defendants' invitation to adopt narrow and rigid rules for compliance
8 with the statute of frauds. Instead, we affirm the standard espoused by Professor
9 Corbin and adopted by this Court in]: "Let us proceed, therefore, with a general
10 consideration of what constitutes a sufficient note or memorandum. We may well
11 start with this one general doctrine: There are few, if any, specific and uniform
12 requirements. The statute itself prescribes none; and a study of the existing
13 thousands of cases does not justify us in asserting their existence. Some note or
14 memorandum having substantial probative value in establishing the contract must
15 exist; but its sufficiency in attaining the purpose of the statute depends in each
16 case upon the setting in which it is found.... That is the rule of law to be applied
17 with intelligence and discrimination and not like a pedant playing a game of
18

19 ²² Promissory estoppel consists of four elements: 1) a promise; 2) that the promisor
20 should reasonably expect to induce the promisee into action of a definite and substantial
21 character; 3) which in fact produced reliance or forbearance of that nature; 4) in
22 circumstances such that the promise must be enforced if injustice is to be avoided.
23 *McMath v. Ford Motor Co.*, 259 N.W.2d 140, 142 (Mich. Ct. App. 1977). "A promise is a
24 manifestation of intention to act or refrain from acting in a specified manner, made in a
25 way that would justify a promisee in understanding that a commitment had been made."
26 *Schmidt v Bretzlaaff*, 528 N.W.2d 760, 762 (Mich. Ct. App. 1995). Moreover, "reliance is
27 reasonable only if it is induced by an actual promise." *State Bank of Standish v Curry*,
28 500 N.W.2d 104, 107 (Mich. 1993)). The Michigan Supreme Court states:
Variables such as the nature of the relationship between the parties, the clarity of the
representation, as well as the circumstances surrounding the making of the
representation, are important to the determination of whether the manifestation rises to
the level of a promise. Both traditional contract and promissory estoppel theories of
obligation use an objective standard to ascertain whether a voluntary commitment has
been made. To determine the existence and scope of a promise, we look to the words and
actions of the transaction as well as the nature of the relationship between the parties and
the circumstances surrounding their actions.

1 logomachy."

2 Ms. Scully's e-mail of November 19, 2009 satisfies the statute of frauds when
3 it states: "Here is the bottom line . . . I can get the payment reduced for 6 months
4 to \$755.07 to give the estate time to figure out what they want to do.

5 "The Unpaid Principal Balance at this time is \$60,684.22, the current I/R is
6 8.75. The loan is currently due for the 04/01/2009 payment. I need the paper
7 work I sent over Tuesday back to me by tomorrow . . . I am off tomorrow, but I will
8 sent it off to our loss Mitt dept in Waterloo, IA to request the Special Forbearance.
9 I HAVE to have that paperwork, otherwise under the Freddie Mac guidelines I
10 cannot adjourn the sale any longer. These are formal arrangements, and our set
11 up on our servicing system. If I do not receive the paper work as requested, I will
12 assume the Estate has decided to let the property go to FC sale on 11/24, and
13 proceed with the 6 month redemption period.

14

15 "Regards,

16

17 "**Patty L. Scully**"

18 Gerard Wiener sent in his paperwork, the foreclosure sale was adjourned,
19 and that it would take Charlotte Wiener longer to get her paperwork in did not
20 bother Ms. Scully at all.

21

22 V. CONCLUSION

23 GMAC's foreclosure sale was flawed and did not comport with Ms. Scully's
24 2nd forbearance proposal, the initial terms of which were filled by the Wieners.
25 Certainly triable issues of fact exist as to what occurred.

26 Without regard to the substance of GMAC's motion, the motion is premature
27 because the prerequisite to having the motion heard was not satisfied because a
28 PMK was not provided for deposition.

1 GMAC's actions were done with ill-will, and reckless disregard of the
2 Wiener's rights, justifying treatment of GMAC's actions as being actions in tort.
3
4
5
6
7
8
9

10 Dated: February 5, 2012
11

12 By: s/David J. Brown
13

14 David J. Brown (CA 56628)
15 Attorney for Plaintiffs
16 1135 Ulloa Street
17 San Francisco, CA 94127
18 415-716-7786
19
20
21
22
23
24
25
26
27
28

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Content</u>
A	Stipulation and Order with Respect to Motion for Relief From Automatic Stay
B	GMAC's Response to Plaintiffs' Interrogatory No. 1
C	Excerpt's from the November 30, 2012, Deposition of Roberto Montoya
D	Declaration of Gerard Wiener in Opposition to GMAC's Renewed Motion for Summary Judgment
E	Roland Wiener's Death Certificate
F	Lis Pendens Recorded with Respect to This Lawsuit
G	Excerpts of GMAC's Service Notes Relating to the Wiener Loan
H	Excerpts from the Scully and Montoya Depositions
I	Excerpts from the November 29, 2012, Deposition of Ms. Scully
J	Gerard Wiener's and Charlotte Wiener's Documentation Sent to Ms. Scully Regarding the 2nd Forbearance Attempt
K	January 5, 2010 Sheriff's Deed and Accompanying Documents

EXHIBIT A

TO PLAINTIFFS' OPPOSITION TO GMAC'S RENEWED MOTION FOR SUMMARY JUDGMENT

Stipulation and Order with Respect to Motion of Gerard Wiener for Relief from Automatic Stay
as to GMAC Mortgage, LLC.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:) Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,) Chapter 11
Debtors.) Jointly Administered

**STIPULATION AND ORDER WITH RESPECT TO
MOTION OF GERARD WIENER FOR RELIEF FROM
AUTOMATIC STAY AS TO GMAC MORTGAGE, LLC**

Subject to the approval of this Court (the “Court”), this Stipulation and Order (the “Stipulation and Order”) is made and entered into by, between and among the debtors and debtors in possession in the above-captioned bankruptcy cases (collectively, the “Debtors”) and Gerard Wiener (“Movant” and, with the Debtors, each a “Party” and together, the “Parties”).

RECITALS:

A. On May 14, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are managing and operating their businesses as debtors and debtors in possession

B. Movant is a plaintiff, on behalf of his deceased father's estate, in a civil action (the “Action”) against GMAC Mortgage, LLC (“GMAC Mortgage”), one of the above-captioned Debtors, and non-Debtor defendants Bankers Trust Company (“Bankers Trust”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Fifth Third Mortgage-MI, LLC (“Fifth Third”), Jeffrey Baskin and Lauren Newman (collectively, with Freddie Mac, Fifth Third, Bankers Trust,

and GMAC Mortgage, the “Defendants”), pending in the United States District Court for the Eastern District of Michigan (the “Michigan Federal Court”), Case No. 11-10770-GCS-PJK.

C. In May 1972, Movant’s father, Roland Wiener purchased the real property located at 1946 Parmenter Boulevard, Apartment 305, Building 53, Segment 19 Royal Oak, Michigan (the “Property”). In 1997, to refinance the purchase of the Property, Roland Wiener obtained a loan secured by a mortgage (the “Mortgage”) on the Property. In 2003, Freddie Mac purchased the Mortgage from Bankers Trust and was the owner of the Mortgage until foreclosure in early 2010. GMAC Mortgage was the servicer of the Mortgage at all relevant times to the allegations raised in the Action.

D. The Property was sold at a Sheriff’s sale to Freddie Mac on January 5, 2010.

E. Subsequently, on June 22, 2010, Movant, as personal representative of his father’s estate, filed the Action against GMAC Mortgage and Bankers Trust in Michigan state court seeking damages and equitable relief for wrongful foreclosure on the Property.

F. On September 21, 2012, the Property was sold by Freddie Mac to Baskin and Newman.

G. Thereafter Movant added Freddie Mac, Baskin, Newman and Fifth Third, the current holder of a Mortgage from Baskin and Newman, as defendants to the Action and Freddie Mac removed the case to the Michigan Federal Court.

H. Pursuant to section 362 of the Bankruptcy Code, the commencement of the Debtors’ Chapter 11 cases automatically stayed the Action against GMAC Mortgage.

I. Each of the Defendants has filed and fully briefed a motion for summary judgment (the “Summary Judgment Motions”) against Movant. Movant has not filed a cross-

motion for summary judgment against any of the Defendants. Movant has opposed each of the Summary Judgment motions.

J. Except as to GMAC Mortgage, by virtue of the automatic stay, the Summary Judgment Motions were argued before and taken under advisement by the Michigan Federal Court on June 18, 2010. On September 17, 2012, the Michigan Federal Court issued a written opinion and order granting the Summary Judgment Motions as to each of the non-debtor Defendants and on October 17, 2012, Movant filed a notice of Appeal of such order. GMAC Mortgage's Summary Judgment Motion (the "GMAC SJ Motion") is fully briefed, but not yet argued, and is currently pending before the Michigan Federal Court.

K. On July 18, 2012, Movants filed a motion pursuant to section 362 of the Bankruptcy Code for relief from the automatic stay seeking relief from the automatic stay to continue prosecuting the Action against GMAC Mortgage, including the taking of certain discovery from the Debtors [Docket No. 813] (the "Motion").

L. In order to resolve the risk and expense of litigating the Motion, the Debtors have reached agreement with Movant under which the Debtors shall consent to a limited modification of the automatic stay pursuant to section 362(a) of the Bankruptcy Code subject to the conditions set forth herein and to this Court's approval of this Stipulation and Order.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, as follows:

AGREEMENT:

1. Upon entry of this Stipulation and Order by the Court, the automatic stay imposed by section 362(a) of Bankruptcy Code shall be modified solely for the limited purpose to permit (i) GMAC Mortgage and Movant to argue the GMAC SJ Motion before the Michigan Federal

Court and any appeals taken in connection therewith, (ii) the Michigan Federal Court to render a ruling on the GMAC SJ Motion, and (iii) the Debtors to produce certain agreed-upon documents and witnesses pursuant to the terms and subject to the terms and conditions set forth herein; provided, however, that GMAC Mortgage may seek no sooner than ten days after the completion of the Agreed Discovery (as defined below), on appropriate notice to schedule argument on the GMAC SJ Motion before the Michigan Federal Court.

2. The Debtors agree to produce only the discovery set forth on Exhibit A annexed hereto (the “Agreed Discovery”). The Debtors shall not be required to provide any other documents, items or witnesses to Movant under this Stipulation and Order.

3. Except as provided herein, the provisions of the automatic stay, including, without limitation, those provisions prohibiting execution, enforcement or collection of any judgment that may be obtained against the Debtors and/or assets or property of the Debtors’ estates (as defined in section 541 of the Bankruptcy Code) shall remain in full force and effect, and Movants, together with their respective agents, attorneys, or representatives, shall not take any action to execute, enforce or collect all of or any portion of any such judgment from the Debtors or its estates or properties.

4. Upon entry of this Stipulation and Order, the Motion shall be deemed withdrawn without prejudice to renew.

5. This Stipulation and Order shall not become effective unless and until it is entered by the Bankruptcy Court.

6. This Stipulation and Order may not be modified other than by a signed writing executed by the Parties hereto or by further order of the Bankruptcy Court.

7. This Stipulation and Order is the entire agreement between the Parties in respect of the subject matter hereof.

8. Each person who executes this Stipulation and Order on behalf of a Party hereto represents that he is duly authorized to execute this Stipulation and Order on behalf of such Party.

9. This Stipulation and Order may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10. The 14-day stay period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is hereby waived and this Stipulation and Order shall be immediately effective upon its entry.

[The remainder of this page is left intentionally blank]

11. This Court shall retain jurisdiction to resolve all matters relating to the implementation of this Stipulation and Order.

Dated: New York, New York
October 23, 2012

GMAC MORTGAGE, LLC <u>/s/ Norman S. Rosenbaum</u> Gary S. Lee Norman S. Rosenbaum MORRISON & FOERSTER LLP 1290 Avenue of the Americas New York, New York 10104 Telephone: (212) 468-8000 Facsimile: (212) 468-7900 <i>Counsel for Debtors and Debtors in Possession</i>	GERARD WIENER, FOR HIMSELF AND AS REPRESENTATIVE OF THE ESTATE OF ROLAND WIENER <u>/s/ David J. Brown</u> David J. Brown 1135 Ulloa Street San Francisco, CA 94127 Telephone: (415) 716-7786 <i>Counsel for Gerard Wiener</i>
--	---

APPROVED AND SO ORDERED
this 27th day of November, 2012 in New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Exhibit A

Agreed Upon Discovery

1. One deposition of Patricia L. Scully, a GMAC Mortgage employee, conducted in accordance with the Federal Rules of Civil Procedure, with appropriate follow-up on any questions not answered because of assertion of a privilege by means of Movant's motion to compel.
2. One deposition of GMAC Mortgage's person most knowledgeable ("PMK"), conducted in accordance with the Federal Rules of Civil Procedure, to take place in Detroit, Michigan, about the following subjects (the "PMK Topics") with appropriate follow-up on any questions not answer because of assertion of a privilege by means of Movant's motion to compel:

Loan made to Roland Wiener, including without limitation,

- a. Administration of loan after made
- b. All aspects of any foreclosure actions regarding the loan
- c. Communications with owner of loan, Freddie Mac, once payments on the loan ceased, including up to the Debtors' bankruptcy filing
- d. Who, in terms of persons and entities made decisions regarding the Wiener loan after payments ceased, specifically including how the decisions were communicated to GMAC Mortgage if they were not GMAC decisions.
- e. How the GMAC Mortgage relationship with Freddie Mac worked with respect to the Wiener loan and the foreclosure sale, the attempts to modify the loan, who made decisions regarding the handling of the loan, and how, if at all, the Freddie Mac Single Family Seller/Servicer Guide played any role in these activities
- f. How and why GMAC Mortgage, directly and indirectly was communicating with Gerard Wiener and his attorney after the foreclosure sale occurred
- g. What authority GMAC Mortgage had from time-to-time with respect to the Wiener loan to modify the loan, to negotiate possible modification of the loan, and from whom or what in terms of communications that authority came
- h. GMAC Mortgage's reference to and following of Freddie Mac's loan modification policies and procedures
- i. GMAC Mortgage's policies and procedures as used in connection with the foreclosure on the Wiener loan

- j. GMAC Mortgage's policies and procedures regarding post foreclosure activities on the Wiener loan
 - k. GMAC Mortgage's policies and procedures regarding the Federal Home Loan Modification program as it was applied or considered to be applied to the Wiener loan
3. No later than five calendar days prior to the PMK deposition, GMAC Mortgage will produce to Movant's counsel, in hard copies or electronically, any documents not yet produced that are relevant to each of the subjects matter of the PMK Topics.

EXHIBIT B

TO PLAINTIFFS' OPPOSITION TO GMAC'S RENEWED MOTION FOR SUMMARY JUDGMENT

GMAC's Response to Plaintiffs' Interrogatory No. 1

8/06/14/16

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERARD WIENER, individually, and as
Personal Representative of the Estate of
Roland C. Wiener,

Plaintiff,

U.S. Dist. Ct. Case No. 11-10770-GCS-PJK

v.

Oakland County Case No. 10-111283-CH

BANKERS TRUST COMPANY, a foreign company,
GMAC MORTGAGE, LLC, a Delaware corporation,
and FEDERAL HOME LOAN MORTGAGE CORPORATION,
a foreign corporation, and JEFFREY BASKIN, an individual,
and LAUREN NEWMAN, an individual,

Defendants,

and

JEFFREY BASKIN, an individual, and LAUREN NEWMAN,
an individual,

Defendants/Counter-Plaintiffs/Cross-Plaintiffs,

v.

GERARD WIENER, individually, and as Personal Representative
of the Estate of Roland C. Wiener,

Plaintiff/Counter-Defendant,

and

FEDERAL HOME LOAN MORTGAGE CORPORATION, a foreign corporation,

Defendant/Cross-Defendant.

Gavin J. Fleming (P68366)
Channelle Kizy White (P69678)
Beals Hubbard, PLC
Attorneys for Plaintiffs
30665 Northwestern Hwy., Ste. 100
Farmington Hills, MI 48334
(248) 932-1101
gfleming@bealshubbard.com
ckizy@kizylaw.com

Frank M. DeLuca (P41604)
McKelvie DeLuca, P.C.
Attorneys for Defendants Bankers Trust
Company and GMAC Mortgage, LLC
280 W. Maple Road, Suite 300
Birmingham, MI 48009
(248) 952-5100
fdeLuca@mckelviedeluca.com

Daniel P. Perk (P39004)
Miller Johnson
Attorneys for Federal Home Loan Mortgage
Corporation
303 N. Rose St., Suite 600
Kalamazoo, MI 49007
(269) 226-2958
hubbenc@millerjohnson.com

Bruce M. Gorosh (P35455)
Jason M. Milstone (P53769)
Lefkofsky & Gorosh, P.C.
Attorneys for Defendants Jeffrey Baskin and
Lauren Newman
31500 Northwestern Hwy., Suite 105
Farmington Hills, MI 48334
(248) 855-5508
bgorosh@lgpclaw.com

/

**GMAC MORTGAGE, LLC'S OBJECTIONS AND ANSWERS TO PLAINTIFFS'
GERARD WIENER'S AND THE ESTATE OF ROLAND WIENER'S, FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR
ADMISSION DIRECTED AT DEFENDANT GMAC**

Defendant, GMAC Mortgage, LLC ("GMAC"), by and through its attorneys, McKelvie DeLuca, P.C., states the following as its Objections and Answers to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission Directed to Defendant GMAC:

PRELIMINARY STATEMENT

Defendant GMAC's investigation and discovery in this matter is ongoing. As such, these objections and answers are provided without prejudice to GMAC's right to provide or object to the production of further documents, evidence and/or information not yet discovered.

Defendant GMAC reserves the right to amend and/or supplement these objections and answers to Plaintiff's first discovery requests as additional responsive information is found by way of discovery and/or otherwise.

GENERAL OBJECTIONS

A. Defendant GMAC's objections to "Plaintiff's First Set of Interrogatories, Request for Production and Requests for Admission Directed to Defendant GMAC" have been prepared

in accordance with the Federal Court Rules and pursuant to a reasonably diligent search for the information and/or documents requested. GMAC submits that the scope of its investigation conducted to locate responsive information and documents has been limited to making inquiries to those activities and employees most likely to be knowledgeable about the specific matters at issue, and reviewing GMAC files in which information related to such matters ordinarily would be expected to be found. To the extent that this discovery purports to acquire or define an investigation that exceeds the foregoing scope, GMAC objects thereto on the grounds that such requirement or definition (i) exceeds the scope of permissible discovery, and (ii) improperly attempts to impose upon GMAC an unreasonable burden and expense and/or duties beyond those required under the Federal Court Rules.

B. GMAC reserves the right to amend these objections and answers and to offer related evidence, as additional facts are ascertained, research is completed and contentions become apparent.

C. To the extent that the discovery contained herein appears to acquire information that is protected from disclosure by the attorney/client privilege and/or the attorney work product doctrine, GMAC objects to the same.

D. By submitting these responses, GMAC does not in any way adopt Plaintiff's purported definition of words and phrases contained in this discovery. GMAC objects to those definitions to the extent that they are inconsistent with (a) the ordinary customary meaning of such words and phrases or (b) the rules governing the permissible scope of discovery.

E. GMAC does not concede that any of the information or documents that were produced are or will be admissible evidence at trial or any evidentiary hearing. Furthermore,

GMAC does not waive any objection, whether or not asserted herein, to use any such documents at trial.

F. GMAC objects to the discovery to the extent it purports to require GMAC to respond on behalf of other persons, or to provide information that is not in the possession, custody or control of GMAC.

G. GMAC objects to providing discovery on any such documents without prior arrangements being made to reimburse GMAC for the cost of locating, extracting and copying which may be incurred.

H. GMAC objects to these interrogatories to the extent they seek answers that call for a legal conclusion.

I. GMAC objects to these interrogatories to the extent that they are oppressive, overly broad and unduly burdensome.

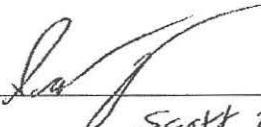
Subject to and without waiving its objections, GMAC responds to Plaintiff's First of Interrogatories, Request for Production and Requests for Admission to Defendant GMAC as follows:

INTERROGATORY NO. 1

Please provide the name, address, and telephone number of the person most knowledgeable about the loan made to Roland Wiener; this person should be knowledgeable regarding: how such loans were marketed or sold to seniors such as Roland Wiener and how the loans were administered after sale.

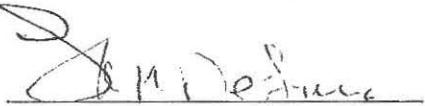
ANSWER: Without waiving its General Objections as fully set forth herein, GMAC submits that there is no one person that is most knowledgeable regarding the loan made to Roland Wiener. GMAC submits that numerous individuals/departments within GMAC may possess information regarding the applicable loan file.

Dated: 10/27, 2011


Scott Zeitz
GMAC Mortgage, LLC and
Bankers Trust Company

Respectfully submitted,

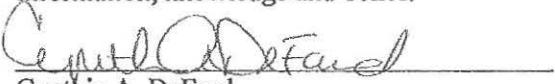
McKELVIE DeLUCA, P.C.


Frank M. DeLuca (P41604)
Attorneys for Defendants GMAC
and Bankers Trust
280 W. Maple Road, Suite 300
Birmingham, MI 48009
(248) 952-5100

Dated: October 27, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on the 31st day of October, 2011. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.


Cynthia A. DeFord

K:\GMAC - Ally Financial\Wiener, Gerard\Federal Court\Answers - 1st Discovery Requests.doc

EXHIBIT C

TO PLAINTIFFS' OPPOSITION TO GMAC'S RENEWED MOTION FOR SUMMARY JUDGMENT

Excerpt's From the November 30, 2012, Deposition of Roberto Montoya

ROBERTO MONTOYA
November 30, 2012

Page 1

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF MICHIGAN

3 SOUTHERN DIVISION

4

5 GERARD WIENER, individually,
6 and as Personal Representative
7 of the Estate of Roland C. Wiener,

8 Plaintiff,

9 vs. Case No. 11-10770

10 Hon. George Caram Steeh
11 BANKERS TRUST COMPANY, ET AL.,
12 Defendants.

13
14 AND RELATED CROSS-ACTIONS
15
16

17 The Deposition of ROBERTO MONTOYA,
18 Taken at 280 West Maple Road, Suite 300,
19 Birmingham, Michigan,
20 Commencing at 8:51 a.m.,
21 Friday, November 30, 2012,
22 Before Amy Tobias Lenga, CSR-4625.

23
24
25

ORIGINAL

ROBERTO MONTOYA
November 30, 2012

Page 7

1 me that and ask for clarification, and if you need
2 clarification as to only part of it tell me what needs
3 clarifying and I will attempt to do that. All right?

4 A. Okay.

5 Q. Unless your attorney instructs you not to answer even
6 if he makes objections for the record you should then
7 go ahead and answer the question. All right?

8 A. Okay.

9 Q. Are you under the influence of any medication, drug,
10 alcohol, whatever, today that might affect your
11 ability to recall or testify?

12 A. No.

13 Q. The question I ask everybody, so don't be offended by
14 it, have you ever been convicted of a felony?

15 A. No.

16 Q. When did you first learn that you were going to be a
17 witness in this case as a person most knowledgeable?

18 A. A couple months ago, approximately.

19 Q. Prior to being so designated did you know anything at
20 all about the Wiener loan?

21 A. No.

22 Q. For purposes of the depo I'll refer to the plaintiff,
23 Gerard Wiener, as either Gerard Wiener or Mr. Wiener.

24 His father, who is the original borrower was Roland
25 Wiener and when I'm referring to him I'll call him

ROBERTO MONTOYA
November 30, 2012

Page 11

1 A. These are all residential mortgage borrowers.

2 Q. Do you know a Patricia Scully?

3 A. No.

4 Q. Have you ever met her?

5 A. No.

6 MR. BROWN: Let's mark as Exhibit 1 a copy
7 of the deposition notice.

8 MR. DeLUCA: Can we go off the record for a
9 second?

10 MR. BROWN: Sure.

11 (Off the record at 9:02 a.m.)

12 (Back on the record at 9:04 a.m.)

13 MARKED BY THE REPORTER:

14 DEPOSITION EXHIBIT 1

15 9:04 a.m.

16 MR. BROWN: It's my understanding that to
17 the extent I use in this deposition exhibits that were
18 in Ms. Scully's deposition yesterday I will refer to
19 them as Scully exhibit number whatever, say I am using
20 it in this deposition. The court reporter has
21 graciously agreed that she will cause to be attached
22 to the Montoya deposition copies of the Scully
23 exhibits that I use. Is that agreeable?

24 MR. DeLUCA: That's fine.

25 MR. BROWN: Is that agreeable with you, Miss

ROBERTO MONTOYA
November 30, 2012

Page 14

1 foreclosure section.

2 Q. Anything else that you reviewed that was Freddie
3 Mac's?

4 A. No.

5 Q. In preparing for the deposition, and setting aside
6 attorneys for the moment, did you talk with anybody at
7 GMAC about the Wiener loan?

8 A. No.

9 Q. Did you talk with anybody at Freddie Mac about the
10 Wiener loan?

11 A. No, sir.

12 Q. Did you talk with anybody outside of GMAC about the
13 Wiener loan?

14 A. No.

15 Q. Are you familiar with the Orlans Law Firm?

16 A. Excuse me?

17 Q. Are you familiar with the Orlans Law Firm,
18 O-r-l-a-n-s?

19 A. I'm familiar in the sense where I've seen letters and
20 I've seen communications between our Foreclosure
21 Department with Orlans & Associates.

22 Q. Have you ever yourself in your normal course of
23 business dealt with the Orlans' firm?

24 A. No, sir.

25 Q. Is it correct that -- well, let me ask you this. In

ROBERTO MONTOYA
November 30, 2012

Page 15

1 preparing for this deposition did you talk with
2 anybody at the Orlans' firm?

3 A. No.

4 Q. And don't tell me what was said at this point, but
5 ~~what attorneys, if any, did you communicate with~~
6 either at GMAC or working for GMAC with respect to
7 preparing for this deposition?

8 A. The only people I spoke to was my attorney sitting
9 next to me, Frank DeLuca, and Christine Buen from our
10 Legal Department.

11 Q. How much time did you spend conversing with Mr.
12 DeLuca, be it telephonically, in person or whatever?

13 A. Approximately an hour and a half.

14 Q. How much time did you spend with your in-house lawyer?

15 A. Around that same time.

16 Q. And in the course of those discussions with your
17 attorneys did they tell you what you should say
18 substantively in response to any questions in the
19 deposition?

20 A. What I should say?

21 Q. Yes.

22 MR. DeLUCA: Well, I am going to caution the
23 witness not to disclose any discussions that you had
24 with your attorneys, be it outside attorneys or inside
25 attorneys, as those conversations are privileged.

ROBERTO MONTOYA
November 30, 2012

Page 29

1 know --
2 A. It just depends on the person entering that note.
3 Some people might have been put -- been more specific
4 as to what department it was transferred to. Some
5 people -- in this case it wasn't specific enough.
6 Q. Okay. And then after it says "further assistance."
7 There's something that says "distinct 4009." Do you
8 see that?
9 A. Yes, sir, I do.
10 Q. Do you know what that is?
11 A. A lot of the times after the note the individual who's
12 fielding that call will put their initials or their
13 name at the end of the note. So one person is Justin
14 K. who entered this note.
15 Q. Do you know what the number means, the 4009?
16 A. I don't.

17 Q. When you have a note like this and these calls and it
18 doesn't indicate otherwise, presumably this is a call
19 that came into ASM, whatever ASM is, correct?
20 A. Yes. To add to that, there is a teller ID that
21 appears before the note in the special column.
22 Q. Okay.
23 A. So everybody has a unique teller ID.
24 Q. Okay. So the first -- essentially, there are two
25 notes there that are all NT's. One came from teller

ROBERTO MONTOYA
November 30, 2012

Page 30

1 08899, correct?

2 A. Correct.

3 Q. Another came from teller 26436. And I assume
4 somewhere in the embodiment on the computer of GMAC if
5 you have the right authority you can identify who
6 those tellers are by name, correct?

7 A. Anybody who has access to the system is able to put a
8 search into the system to find out who it is.

9 Q. When you were preparing for this deposition did you
10 ever look up any of the teller numbers to figure out
11 who it was?

12 A. No.

13 Q. Did you ever try and contact any of the tellers who
14 made entries to talk with them about the Wiener loan?

15 A. No, sir.

16 Q. Below the last note you'll see there's a transaction
17 type DMD. Do you see that?

18 A. I do.

19 Q. What's a DMD, do you know?

20 A. I don't know exactly what that code means. But that
21 code, every time a call is made to the borrower and
22 there is no answer that code is logged on there.

23 Q. So that would be an attempt?

24 A. An attempt to call.

25 Q. To call the borrower or anyone connected with the

ROBERTO MONTOYA
November 30, 2012

Page 35

1 document notice ID. What's document notice ID?
2 A. I don't know the meaning of those numbers.
3 Q. Okay. Would that be true of the document text ID as
4 well?
5 A. Yes, sir.
6 Q. So where it has a 05 under document ID text in that
7 row you don't know what a 05 is, correct?
8 A. I don't.
9 Q. Same with the document text type code?
10 A. That's correct.
11 Q. You don't know in this instance what eight means?
12 A. I don't.

13 Q. And then the transaction entry is what? Can you read
14 it?

15 A. It says "DEF-options to avoid foreclosure."

16 Q. Do you know what that entry means?

17 A. I don't, sir.

18 Q. When you were preparing for the deposition did you
19 look it up?

20 A. No, sir.

21 Q. If you look at an entry that's about a third from the
22 bottom under 5/18/2009, it's the last 5/18/2009 row,
23 you'll see the transaction type is FSV. Do you see
24 that?

25 A. I do.

ROBERTO MONTOYA
November 30, 2012

Page 71

1 contained in the exhibit is accurate.
2 MR. BROWN: Well, since he's supposed to be
3 a person most knowledgeable about all aspects of any
4 foreclosure actions regarding the loan I would
5 disagree with you.

6 MR. DeLUCA: Well, he's not a fact witness,
7 Counselor. He's here as a corporate designated
8 witness 30(b) (6) witness. He does not have intimate
9 knowledge of what actually transpired in this case.

10 MR. BROWN: But he, in theory, is supposed
11 to find a way to become informed of facts as the
12 person most knowledgeable.

13 MR. DeLUCA: I think we complied with the
14 court rule.

15 MR. BROWN: All that being said, are you
16 instructing him not to answer?

17 MR. DeLUCA: No. I am placing an objection
18 on the record.

19 BY MR. BROWN:

20 Q. So going back to paragraph eight. Do you recall the
21 question?

22 A. I do recall the question.

23 Q. And what's your answer?

24 A. I've been instructed not to answer.

25 MR. DeLUCA: No. Excuse me. If you have

ROBERTO MONTOYA
November 30, 2012

Page 75

1 A. I can't recall if I have or not. I don't think I
2 have.

3 Q. So your best recollection, albeit you're not
4 absolutely positive, it wasn't in the packet of
5 materials provided to you by Mr. DeLuca, correct?

6 A. I don't remember it being in there.

7 Q. Okay. In your review of materials preparing for this
8 deposition did you see or hear anything that indicated
9 that Mr. Wiener or his attorney, Mr. Pookrum or either
10 of his sisters, were ever informed that the
11 foreclosure sale date was going to be January 5th,
12 2010?

13 A. I don't know if there was, sir. I don't know if there
14 was any letters that were sent out to Mr. Wiener
15 notifying him of the sale on January the 5th, 2010.

16 Q. Okay. You don't know and you don't recall seeing any,
17 correct?

18 A. Correct.

19 Q. And would that same answer be true if the question
20 were broad enough to communications, be it by letter,
21 by e-mail, by fax or verbally, if a verbal -- if a
22 record was made of the verbal conversation in the
23 notes?

24 A. That's correct.

25 Q. Okay. So you don't know whether it happened or not

ROBERTO MONTOYA
November 30, 2012

Page 94

1 GMAC made reference to the Freddie Mac Seller Servicer
2 Guide in dealing with the Wiener loan, right?
3 A. I'm sorry, repeat the question one more time.
4 Q. Let me try it again.
5 A. Yeah.

6 Q. Is it correct that you don't know who, if anyone,
7 dealing on the Wiener loan made reference to the
8 Freddie Mac Seller Servicer Guide, correct?
9 A. I don't know, that's correct.

10 Q. What you have done is you made an assumption that
11 somebody did and was trying to follow it, is that
12 correct?

13 A. That is correct, sir.

14 Q. Why don't you skip a topic and then read the topic
15 after the policies and procedures regarding
16 post-foreclosure.

17 MR. DeLUCA: J

18 A. Oh, J?

19 BY MR. BROWN:

20 Q. Yeah.

21 A. "GMAC's policies and procedures regarding
22 post-foreclosure activities on the Wiener loan."

23 Q. And what did you discover, if anything, about GMAC's
24 policies and procedures were regarding
25 post-foreclosure activities on the Wiener loan?

EXHIBIT D

TO PLAINTIFFS' OPPOSITION TO GMAC'S RENEWED MOTION FOR SUMMARY JUDGMENT

Declaration of Gerard Wiener in Opposition to GMAC's Renewed Motion for Summary
Judgment

1
2 I, the undersigned, declare:
3

- 4 1. I am the plaintiff in this matter for myself and as representative of the
5 Estate of Roland Wiener.
- 6 2. I could and would, if called upon, testify from my own personal
7 knowledge of the following facts because I was and/or am involved in each
8 of the activities described in this Declaration and I am competent to testify
9 to these facts.
- 10 3. My father, Roland Wiener passed away on January 23, 2009. Exhibit
11 E to the Plaintiffs' Opposition to GMAC's Renewed Motion for Summary
12 Judgment is a true duplicate of Roland Wiener's Death Certificate.
- 13 4. Shortly after Roland Wiener's death, I undertook to learn the status of
14 the loan being administered by GMAC Mortgage ("GMAC"), inform GMAC
15 of Roland Wiener's death, provide GMAC my contact information and
16 initiate a discussion with GMAC about what the Roland Wiener Estate
17 could do with the loan and home going forward.
- 18 5. What followed was over a year of frustration, mis-information, and
19 stalling by GMAC that totally thwarted my attempts to learn about and deal
20 with the loan and property on behalf of my Father's Estate.
- 21 6. GMAC brazenly attempted to make life difficult for a borrower's
22 successors, rather than rationally deal with me as the successors'
23 representative. GMAC's actions directly resulted in a significant cost to the
24
25
26
27
28

1 Estate and me, with the concepts of fairness and truthfulness being
2 abandoned by GMAC.

3
4 7. GMAC and its minions made no effort for consistency of position and
5 throughout the process failed to communicate fairly with me about
6 GMAC's position on matters much less give me information important and
7 necessary to protect the Roland Wiener's Estate's rights.

8
9 8. While I was dealing with GMAC representatives who portrayed
10 sympathy to me for the delays in GMAC's ability to talk with me and
11 advised me just to sit tight, I later learned that other sections of GMAC had
12 started foreclosure without telling me even though I had numerously
13 identified myself and given GMAC my contact information.

16
17 9. From my point of view, I was looking for the lender's servicer to
18 explain the details of the loan, what each of the charges were, and perhaps
19 make adjustments to the note obligations, first as a forbearance
20 arrangement to give the Estate time to determine what course of action it
21 wanted to follow, and then either as a loan modification or payoff as the
22 Estate determined what it wanted to do.

24
25 10. After 3 months of no substantive response from GMAC in response to
26 my attempts to communicate with it, the Estate ceased making loan
27 payments to try to get GMAC's attention and response.
28

1 11. In late August/early September of 2009, GMAC tendered Patricia
2 Scully to work with me regarding the loan. Ms. Scully represented herself
3 in my initial discussions with her, and from time-to-time thereafter, as the
4 person being provided to me by GMAC to work with me and my attorney in
5 dealing with GMAC regarding the loan. She emphasized that she was the
6 person within whom I should deal. Based on her statements to me that she
7 was the person with whom I was to interact, and she was the person who
8 offered possible forbearance plans, and who caused adjournment or
9 continuance of purportedly established foreclosure sales dates, I relied on
10 her statements that she was the person with whom I should deal regarding
11 the Roland Wiener loan. She never communicated anything else to me.

15 12. After one attempt to reach a forbearance agreement, that Ms. Scully
16 said was no longer available, a second attempt to reach a forbearance
17 agreement was made. That attempt was suggested in detail by Ms. Scully
18 to me in part in exchanged e-mails and in part in telephonic conversations
19 with her. The attempt was started when there was an impending
20 foreclosure sale scheduled to occur. Ms. Scully said she was not sure she
21 could prevent the sale from happening but she needed certain specific
22 submissions from myself and my sister, Charlotte. The reason she included
23 Charlotte in the request is that Ms. Scully said that to obtain the
24 forbearance, one of the three children had to live on the premises as a
25
26
27
28

1 condition of the forbearance. Ms. Scully said that she needed the
2 submissions within the next day.

3
4 13. In her timeframe, I sent my submission pertaining to myself to her. I
5 then explained that since my sister lived in Paris, France, and had to
6 prepare certain materials to be able to complete the specific materials Ms.
7 Scully was requesting, it would take her longer to prepare the information
8 being sought. Ms. Scully made no protest then or later that the fact it
9 would take my Sister some time to prepare her materials was any problem,
10 or that such additional time would thwart in any way, the effort to reach a
11 forbearance arrangement. Furthermore, once she received my materials,
12 and without yet receiving my sister's materials, Ms. Scully rescheduled the
13 then pending foreclosure sale to December 29, 2009. She in no way
14 presented herself as a mere conduit with respect to GMAC's loss mitigation
15 department. She never said that she had no obligation or intention of
16 talking with other aspects of GMAC regarding the loan or that I would still
17 have to deal with them independent of her. Rather, she consistently
18 presented herself as being the GMAC contact for me. She never claimed
19 that she had no interaction with or responsibilities toward the loan with
20 respect to other GMAC departments who from time-to-time took actions
21 regarding the loan, including the foreclosure unit and its outside
22
23
24
25
26
27
28

1 foreclosure attorneys, the assumption department, the customer service
2 department, or any other department.

3
4 14. Ms. Scully never told me that since my sister was becoming involved a
5 forbearance was no longer being considered. She never explained to me
6 that an assumption, rather than a forbearance was on the table instead of a
7 and that I would have to deal directly with the assumptions department,
8 rather than her.

9
10 15. With respect to the second forbearance attempt Ms. Scully never sent
11 me a forbearance agreement to sign, and never provided me with the final
12 exact payment to be made as the initial payment or for any other
13 subsequent payments. I believed one would come after she and her group
14 had reviewed my sister's and my submissions.

15
16 16. In the latter part of December, 2009, Ms. Scully stopped
17 communicating with me Wiener and my attorney, and grossly failed to
18 keep us informed of the situation, including her notion that trying to do a
19 forbearance was off the table and an assumption was going to be
20 attempted.

21
22 17. I was never informed by anyone that a foreclosure sale date of
23 January 5, 2010, was set for a sale by advertisement.

1 18. When I brought suit against GMAC and others, my attorney filed and
2 recorded in Oakland County, Michigan on June 22, 2010, a lis pendens. A
3 true copy of that lis pendens is Exhibit F to the Opposition to the Renewed
4 Motion.

6 19. On February 4, 2009, I called GMAC to tell it of my father's death, supply
7 my contact information, and inquire into a loan payoff figure for my childhood
8 home. Unbelievably, this phone call was the first of no less than 53 unsuccessful
9 attempts by me to obtain critical information to which I was entitled and to
10 provide GMAC information which logically one would think it wanted, to wit:
11 The name and contact information of an alive person with whom it could deal.
12

14 20. The first call, however, was a vivid foreshadowing of future events. GMAC
15 put me on hold for 46 minutes, then transferred me to GMAC's Assumptions
16 Department. The Assumptions Department told me that no one could speak
17 with me unless GMAC received a probate court letter of authority for Gerard
18 Wiener or, since in this case an estate had not yet been opened, a filed death
19 certificate regarding Roland Wiener. I agreed to send my father's death
20 certificate immediately. I also provided all of my contact information and
21 requested that GMAC add it to the loan file.
22

24 21. I promptly sent my father's death certificate to GMAC's Assumptions
25 Department by mail, along with all of the Estate's contact information. On
26 behalf of the Estate I continued to make timely mortgage payments on the loan.
27

1 GMAC without question or comment accepted those payments but would do and
2 did nothing in response to my request to discuss the loan with GMAC.

3 22. When I called to discuss the mortgage shortly after sending in the death
4 certificate and contact information, GMAC said that it's system did not reflect
5 receipt of the death certificate and thus it could not speak to me. GMAC advised
6 me that it could take some time for the death certificate I had sent to be reflected
7 in GMAC's system even though it had physically been received, It then asked me
8 to wait and call back later.
9

10 11 23. I made additional calls but each time I asked about these things, I was
12 either told that GMAC had still not received the death certificate and, therefore,
13 could not speak with me, was disconnected, or was improperly routed to some
14 unit that could not provide any help.
15

16 17 24. I was told to fax the death certificate again. I did so, and also mailed it to
18 the Assumptions Department. During one of my follow-up phone calls, the
19 GMAC Assumptions agent advised me that it could take up to three weeks for a
20 fax to "hit the system" and advised him to "relax and wait a few weeks" and then
21 call back. An improbable three months after my father's death, after sending my
22 death certificate by various methods multiple times to GMAC, I continued to be
23 unable to get anyone at GMAC to recognize me as a legitimate representative of
24 the Estate or to discuss the loan. I persistently continued to call GMAC and pose
25 the questions the Estate needed answered, albeit without success. I even offered
26 GMAC \$55,000 in cash to pay off the loan. In each instance I called GMAC, I
27
28

1 was advised that without the death certificate on file, he could not be given any
2 information or response either on the phone or in writing. GMAC refused to
3 address my offer to pay-off the loan.

4
5 25. Finally, in April 2009, out of sheer frustration, I had the Estate suspend
6 mortgage payments in an attempt to get GMAC's attention and cause it once and
7 for all to deal with him. That effort too failed. When, on April 15, 2009, I called
8 GMAC's Assumptions Department and explained that the Estate was having
9 difficulty justifying making mortgage payments without knowing, for one thing,
10 whether there was mortgage insurance. The GMAC representative advised me
11 that it had no proof in its system that I was authorized to discuss the loan, but
12 that nonetheless the best solution would be for me to quitclaim the house
13 directly over to GMAC without any compensation, in order to protect my dead
14 father's credit. "Don't you want to protect his memory?" taunted the GMAC
15 agent. Appalled, I asked to speak to a supervisor or someone else in authority.
16 My request was denied, then I was put on hold for 42 minutes, and then
17 disconnected.
18

19
20
21 I declare under penalty of perjury under the laws of the United States
22 of America and the State of California that the foregoing is true and correct
23 and that I have executed this Declaration as of the 4th day of February,
24 2013 at San Francisco, California.

25 By: _____/s/ _____
26

27 Gerard Wiener
28